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Attorneys for Defendant  
SILICON VALLEY ANIMAL CONTROL AUTHORITY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

LEE JACKSON and KENNETH JACKSON,  
Plaintiffs,

v.

SILICON VALLEY ANIMAL CONTROL  
AUTHORITY, CITY OF SANTA CLARA, CITY  
OF CAMPBELL, HUMANE SOCIETY SILICON  
VALLEY DOES 1 TO 20,  
Defendants.

Case No.: 107CV079050

[PROPOSED] ORDER  
SUSTAINING DEFENDANT  
SILICON VALLEY ANIMAL  
CONTROL AUTHORITY'S  
DEMURRER AND DISMISSING  
PLAINTIFF'S COMPLAINT

Date: September 25, 2007  
Time: 9:00 a.m.  
Dept.: 22

BY FAX

Complaint filed: January 29, 2007

Defendant SILICON VALLEY ANIMAL CONTROL AUTHORITY's ("Defendant")  
demurrer to plaintiff LEE JACKSON and KENNETH JACKSON's ("Plaintiffs") complaint filed in this  
action came on regularly for hearing in Department 22 of this Court on September 22, 2007. Low, Ball  
& Lynch appeared on behalf of Defendant, and \_\_\_\_\_ appeared on behalf of  
Plaintiffs.

Having read and considered all papers submitted by the parties in regard to Defendant's  
demurrer, and having heard all oral argument presented by the parties relating thereto, this Court rules as  
follows:

1. Defendant's general demurrer to Plaintiffs' entire complaint is sustained without leave to  
amend pursuant to Code of Civil Procedure § 430.10(e), because Plaintiffs' complaint fails to state facts

1 sufficient to constitute any cause of action against Defendant.

2         2. Defendant's general demurrer to Plaintiffs' first cause of action for general negligence is  
3 sustained without leave to amend pursuant to Code of Civil Procedure §§ 430.10(e) and 430.50(a),  
4 because Plaintiff's complaint fails to state facts sufficient to constitute a cause of action for general  
5 negligence against Defendant.

6         3. Defendant's general demurrer to Plaintiffs' third cause of action for negligent hiring is  
7 sustained without leave to amend pursuant to Code of Civil Procedure §§ 430.10(e) and 430.50(a),  
8 because Plaintiff's complaint fails to state facts sufficient to constitute a cause of action for negligent  
9 hiring against Defendant.

10         4. Defendant's general demurrer to Plaintiffs' fourth cause of action for negligent infliction  
11 of emotional distress is sustained without leave to amend pursuant to Code of Civil Procedure  
12 §§ 430.10(e) and 430.50(a), because Plaintiff's complaint fails to state facts sufficient to constitute a  
13 cause of action for negligent infliction of emotional distress against Defendant.

14         5. Defendant's general demurrer to Plaintiffs' fifth cause of action for assault and battery is  
15 sustained without leave to amend pursuant to Code of Civil Procedure §§ 430.10(e) and 430.50(a),  
16 because Plaintiff's complaint fails to state facts sufficient to constitute a cause of action for assault and  
17 battery against Defendant.

18         6. Defendant's general demurrer to Plaintiffs' sixth cause of action for intentional infliction  
19 of emotional distress is sustained without leave to amend pursuant to Code of Civil Procedure  
20 §§ 430.10(e) and 430.50(a), because Plaintiff's complaint fails to state facts sufficient to constitute a  
21 cause of action for intentional infliction of emotional distress against Defendant.

22         7. Defendant's general demurrer to Plaintiffs' seventh cause of action for conversion is  
23 sustained without leave to amend pursuant to Code of Civil Procedure §§ 430.10(e) and 430.50(a),  
24 because Plaintiff's complaint fails to state facts sufficient to constitute a cause of action for conversion  
25 against Defendant.

26         8. Defendant's general demurrer to Plaintiffs' eighth cause of action for violation of civil  
27 rights pursuant to 42 U.S.C. § 1983 is sustained without leave to amend pursuant to Code of Civil  
28 Procedure §§ 430.10(e) and 430.50(a), because Plaintiff's complaint fails to state facts sufficient to

1 constitute a cause of action for violation of civil rights pursuant to 42 U.S.C. § 1983 against Defendant.

2 9. Because the Court has sustained the Defendant's demurrer to the entire complaint without  
3 leave to amend, Plaintiffs' complaint against the Defendant in this action is hereby dismissed with  
4 prejudice.

5 IT IS SO ORDERED.

6  
7 Dated: \_\_\_\_\_

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10 JUDGE OF THE SUPERIOR COURT  
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5 Attorneys for Defendant  
6 SILICON VALLEY ANIMAL CONTROL AUTHORITY

7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SANTA CLARA

10  
11 LEE JACKSON and KENNETH JACKSON,

12 Plaintiffs,

13 v.

14 SILICON VALLEY ANIMAL CONTROL  
15 AUTHORITY, CITY OF SANTA CLARA, CITY  
16 OF CAMPBELL, HUMANE SOCIETY SILICON  
VALLEY DOES 1 TO 20,

17 Defendants.

Case No.: 107CV079050

PROOF OF SERVICE  
(Demurrer)

BY FAX

ENDORSED

2007 AUG 23 P 2:44

FILED  
COUNTY OF SANTA CLARA, CALIFORNIA  
BY: A. Ilas

Jackson v. Silicon Valley Animal Control Authority, et al.  
Santa Clara County Superior Court Case No.: 107CV079050

**PROOF OF SERVICE**

I am over the age of eighteen (18) years and not a party to the within action. I am employed at Low, Ball & Lynch, 505 Montgomery Street, 7<sup>th</sup> Floor, San Francisco, California 94111.

On the date indicated below, I served the following documents enclosed in a sealed envelope on the listed addresses:

**DOCUMENT:** DEFENDANT SILICON VALLEY ANIMAL CONTROL AUTHORITY'S:

- NOTICE OF DEMURRER TO PLAINTIFF'S COMPLAINT;
- DEMURRER TO PLAINTIFF'S COMPLAINT;
- MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF;
- REQUEST FOR JUDICIAL NOTICE IN SUPPORT THEREOF; and
- [PROPOSED] ORDER SUSTAINING DEFENDANT SILICON VALLEY ANIMAL CONTROL AUTHORITY'S DEMURRER AND DISMISSING PLAINTIFF'S COMPLAINT

**ADDRESSES:**  
Stuart M. Wilson, Esq.  
1671 The Alameda, Suite 300  
San Jose, CA 95126  
Telephone: 408/293-8400  
Facsimile: 408/293-0714

☐ **(BY MAIL)** I placed a true copy, enclosed in a sealed, postage paid envelope, and deposited same for collection and mailing at San Francisco, California, following ordinary business practices, addressed as set forth below.

☐ **(BY FACSIMILE)** I caused the said document to be transmitted by Facsimile transmission to the number indicated after the addresses noted above or on the attachment herein.

☒ **(BY OVERNIGHT COURIER)** I caused each such envelope addressed to the parties to be deposited in a box or other facility regularly maintained by the overnight courier or driver authorized by the overnight courier to receive documents.

I am readily familiar with this law firm's practice for the collection and processing of documents for regular and certified mailing, overnight mail, and facsimile transaction, and said document(s) are deposited with the United States Postal Service or overnight courier depository on the same day in the ordinary course of business.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at San Francisco, California on August 23, 2007

  
Kathi de Leon

(P)

ENDORSED

2007 AUG 23 P 2:52

KIRI TOFF, CLERK OF THE SUPERIOR COURT  
COUNTY OF SANTA CLARA, CALIFORNIA  
BY: A. Ilias  
DEPUTY CLERK

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SILICON VALLEY ANIMAL CONTROL AUTHORITY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

LEE JACKSON and KENNETH JACKSON,  
Plaintiffs,

v.

SILICON VALLEY ANIMAL CONTROL  
AUTHORITY, CITY OF SANTA CLARA, CITY  
OF CAMPBELL, HUMANE SOCIETY SILICON  
VALLEY DOES 1 TO 20,

Defendants.

Case No.: 107CV079050

DEFENDANT SILICON VALLEY  
ANIMAL CONTROL  
AUTHORITY'S NOTICE OF  
MOTION AND MOTION TO  
STRIKE PORTION OF  
PLAINTIFFS' COMPLAINT

Date: September 25, 2007

Time: 9:00 a.m.

Dept.: 22

BY FAX

Complaint filed: January 29, 2007

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN, that on September 25, 2007, at 9:00 a.m., in Department 22 of the above-entitled Court, defendant SILICON VALLEY ANIMAL CONTROL AUTHORITY ("Defendant") will move the Court to strike the following portion of the complaint filed in this action by plaintiffs LEE JACKSON and KENNETH JACKSON ("Plaintiffs"), pursuant to Code of Civil Procedure §§ 435(b)(1), 431.10(b)(3), and 436(a), without leave to amend:

1. Plaintiffs' Exemplary Damages Attachment with respect to Defendant: Wherein Plaintiffs seek to recover exemplary damages from Defendant, alleging that Defendant was guilty of malice, fraud and oppression. (Complaint at 13.)


This motion is made on grounds that the above-described portion of Plaintiff's complaint is an



1 immaterial allegation. (C.C.P. §§ 435(b)(1), 431.10(b)(3), and 436(a).) This motion is further based  
2 upon this Notice, the Memorandum of Points and Authorities filed herewith, the Request for Judicial  
3 Notice and all exhibits attached thereto filed herewith, all papers in support of the City Defendants'  
4 demurrer filed concurrently herewith, and upon such oral and/or documentary evidence as may be  
5 presented at the hearing on this motion.

6  
7 Dated: August 23, 2007.

8 LOW, BALL & LYNCH

9  
10 By   
11 MARK F. HAZELWOOD  
12 DIRK D. LARSEN  
13 Attorneys for Defendant  
14 SILICON VALLEY ANIMAL CONTROL  
15 AUTHORITY  
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Attorneys for Defendant  
SILICON VALLEY ANIMAL CONTROL AUTHORITY

ENDORSED

2007 AUG 23 P 2:52

FILED TO THE CLERK OF THE SUPERIOR COURT  
COUNTY OF SANTA CLARA  
BY: A. Ilas  
CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA

LEE JACKSON and KENNETH JACKSON,  
Plaintiffs,

v.

SILICON VALLEY ANIMAL CONTROL  
AUTHORITY, CITY OF SANTA CLARA, CITY  
OF CAMPBELL, HUMANE SOCIETY SILICON  
VALLEY DOES 1 TO 20,  
Defendants.

Case No.: 107CV079050

DEFENDANT SILICON VALLEY  
ANIMAL CONTROL  
AUTHORITY'S MEMORANDUM  
OF POINTS AND AUTHORITIES  
IN SUPPORT OF MOTION TO  
STRIKE PORTION OF  
PLAINTIFFS' COMPLAINT

Date: September 25, 2007  
Time: 9:00 a.m.  
Dept.: 22

BY FAX

Complaint filed: January 29, 2007

I. INTRODUCTION AND RELIEF SOUGHT

This lawsuit arises out of allegations that defendants unlawfully entered plaintiff Lee Jackson and Kenneth Jackson's ("Plaintiffs") motor home, seized Plaintiffs' pet animals, detained Plaintiffs and battered plaintiff Lee Jackson on December 19, 2005. (Complaint.) As Plaintiffs correctly acknowledge, defendant SILICON VALLEY ANIMAL CONTROL AUTHORITY is a public entity. (Complaint at 2.)

Pursuant to Code of Civil Procedure §§ 435(b)(1), 431.10(b)(3), and 436(a), Defendant moves the Court to strike the following portion of Plaintiffs' complaint (the "Complaint") without leave to amend:

1. Plaintiffs' Exemplary Damages Attachment with respect to Defendant: Wherein



Plaintiffs seek to recover exemplary damages from Defendant, alleging that Defendant was guilty of malice, fraud and oppression. (Complaint at 13.)

For purposes of this motion to strike, Defendant incorporates by reference in their entirety, the arguments set forth in the memorandum of points and authorities in support of its demurrer, concurrently filed herewith. (See Defendant's Memorandum of Points and Authorities In Support of Demurrer, filed concurrently herewith.) "A notice of motion to strike...must be noticed for hearing and heard at the same time as the demurrer." (Rule 3.1322(b) of the Cal. Rules of Court, also see C.C.P. §435(b)(3).)

## **II. APPLICABLE LAW AND ARGUMENT**

### **A. Legal Grounds for Motion to Strike.**

Code of Civil Procedure §435 provides, in pertinent part:

(b)(1) Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike the whole or any part thereof. . .

Code of Civil Procedure §431.10 provides, in pertinent part:

(b) An immaterial allegation in a pleading is any of the following:

(3) A demand for judgment requesting relief not supported by the allegations of the complaint . . .

Code of Civil Procedure §436 provides:

The court may, upon a motion made pursuant to section 435, or at any time in its discretion, and upon terms it deems proper:

(a) Strike out any irrelevant, false, or improper matter inserted in any pleading.

### **B. Plaintiffs' Request for Exemplary Damages is not Supported by the Allegations in the Complaint.**

A motion to strike is the proper method for removing damages claims that are not supported by the cause of action pleaded. (*Cal. Practice Guide: Civ. Proc. Before Trial (The Rutter Group)*, p. 7-65, § 7:182.) Here, as discussed below, neither Plaintiffs' state-law causes of action nor their federal cause of action support the recovery of exemplary damages against Defendant, which Plaintiffs acknowledge is a public entity. (See Complaint at 2.)

///

1                   **1     The Silicon Valley Animal Control Authority, a Public Entity, is not Liable**  
 2                   **for Exemplary Damages under California Law.**

3                   Government Code § 818 provides, in pertinent part: “[n]otwithstanding any other provision of  
 4 law, a public entity is not liable for . . . damages imposed primarily for the sake of example and by way  
 5 of punishing the defendant.” According to Government Code § 811.2, a “public entity” includes “the  
 6 State, the Regents of the University of California, a county, city, district, public authority, public agency,  
 7 and any other political subdivision or public corporation in the State.” As Plaintiff’s Complaint appears  
 8 to acknowledge, Defendant fits this definition of “public entity.” (*See* Complaint at 2.) As a public  
 9 entity, the Silicon Valley Animal Control Authority is thus not liable for punitive or exemplary damages  
 10 under any of Plaintiff’s state-law causes of action against it (first, third, fourth, fifth, sixth and seventh  
 11 causes of action). Accordingly, Plaintiffs’ “Exemplary Damages Attachment” on page 13 of the  
 12 Complaint should be stricken with respect to the Silicon Valley Animal Control Authority.

13                   **2     Local Governing Bodies Sued Under 42 U.S.C. § 1983 Are Immune from**  
 14                   **Punitive Damages.**

15                   As Plaintiff correctly acknowledges, the Silicon Valley Animal Control Authority is a public  
 16 entity. (Complaint at 2.) Plaintiffs eighth cause of action for violation of civil rights was brought  
 17 pursuant to 42 U.S.C. § 1983. (Complaint at 11.) Local governing bodies are immune from punitive  
 18 damages in suits brought under § 1983. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271  
 19 (1981). Accordingly, Defendant is immune from punitive damages for the § 1983 cause of action as a  
 20 matter of law. The “Exemplary Damages Attachment” on page 13 of the Complaint should thus be  
 21 stricken with respect to the Silicon Valley Animal Control Authority.

22                   **III.   CONCLUSION**

23                   For the reasons stated above, defendant SILICON VALLEY ANIMAL CONTROL  
 24 AUTHORITY respectfully requests that the “Exemplary Damages Attachment” to Plaintiff’s Complaint  
 25 be stricken, with respect to defendant SILICON VALLEY ANIMAL CONTROL AUTHORITY, without  
 26 leave to amend pursuant to Code of Civil Procedure §§ 435(b)(1), 431.10(b)(3), and 436(a).

27                   ///

28                   ///

1 Dated: August 23, 2007.

2 LOW, BALL & LYNCH

3 By 

4 MARK F. HAZELWOOD

5 DIRK D. LARSEN

6 Attorneys for Defendant

7 SILICON VALLEY ANIMAL CONTROL  
8 AUTHORITY



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Attorneys for Defendant  
 SILICON VALLEY ANIMAL CONTROL AUTHORITY

ENDORSED

2007 AUG 23 P 2:52

MINUTE CLERK OF THE SUPERIOR COURT  
 COUNTY OF SANTA CLARA  
 BY: A. Ilas

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 IN AND FOR THE COUNTY OF SANTA CLARA

LEE JACKSON and KENNETH JACKSON,

Plaintiffs,

v.

SILICON VALLEY ANIMAL CONTROL  
 AUTHORITY, CITY OF SANTA CLARA, CITY  
 OF CAMPBELL, HUMANE SOCIETY SILICON  
 VALLEY DOES 1 TO 20,

Defendants.

Case No.: 107CV079050

DEFENDANT SILICON VALLEY  
 ANIMAL CONTROL  
 AUTHORITY'S REQUEST FOR  
 JUDICIAL NOTICE IN SUPPORT  
 OF MOTION TO STRIKE  
 PORTION OF PLAINTIFFS'  
 COMPLAINT

BY FAX

Date: September 25, 2007  
 Time: 9:00 a.m.  
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Complaint filed: January 29, 2007

TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

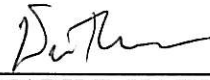
Pursuant to Evidence Code §§ 452 and 453, and without admitting to the truth any of the allegations stated therein, defendant SILICON VALLEY ANIMAL CONTROL AUTHORITY respectfully requests that the Court take judicial notice of the genuineness of plaintiff LEE JACKSON and KENNETH JACKSON's complaint filed in this action on January 29, 2007. A true and correct copy of said document is attached hereto as Exhibit "1."

The court may further take judicial notice of any records of any court of the state. (Evidence Code § 452(d).) When a party requests that the court take judicial notice of such matters and gives the adverse party sufficient notice of the request to enable the adverse party to meet the request and furnishes the court with sufficient information to enable it to take judicial notice of the matter, judicial

1 notice is mandatory. (Evidence Code § 453.)  
2

3 Dated: August 23, 2007.

4 LOW, BALL & LYNCH

5  
6 By 

7 MARK F. HAZELWOOD

8 DIRK D. LARSEN

9 Attorneys for Defendant

10 SILICON VALLEY ANIMAL CONTROL  
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